D.B. CIVIL SPECIAL APPEAL NO.568/2007
Smt. Patence @ Asha Pandya Vs. Smt. Milicent Patrik & Ors.

Date : 28.5.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. R.S. Mankad for the appellant.

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Heard learned counsel for the appellant.

By order dated 16.4.2007, the writ petition was dismissed against unserved respondents inasmuch as on that date the counsel for the petitioner was not present and notices have not been filed. Thereafter the restoration application was also dismissed by order dated 3.5.2007.

The learned counsel for the appellant states that on 16.4.2007 one Shri G.S. Rathore appeared for counsel for the petitioner and had made a request for passing over the case, however, since the Court did not remember his presence, it was not accepted. Be that as it may, in the facts and circumstances, as no one has appeared for the unserved respondents and service on them is yet to be effected and the petition against some of the respondents is continuing, we are of the opinion that in the facts

and circumstances, the writ ought to be restored, provided the appellant complies all other requisites within two days, as the petition has been dismissed against unserved respondents. Notice of this application need not be given to those respondents.

The appeal is accordingly allowed. The restoration application NO.36/2007 is allowed. The writ petition against the unserved respondents is restored, subject to condition that the appellant complies with the requisites within two days.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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